

FEDERAL AND STATE
REQUIREMENTS FOR
PERMANENCY PLAN CONTENT AND PROCEDURES

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Division of Children and Family Services
Department of Health and Family Services

PERMANENCY PLANNING

When a Permanency Plan Is Required

The agency that placed the child outside his or her home, or that has primary responsibility for providing services to the child, must prepare a written permanency plan if the child is living in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, shelter care facility, or in the home of a relative who is not a parent and one or more of the following circumstances exists:

- The child is being held in physical custody under s. 48.207 (non-secure custody), 48.208 (secure detention facility), or 48.209 (county jail).
- The child is in the legal custody of the agency.
- The child is under the supervision of an agency under s. 48.64(2) (foster home, treatment foster home, or group foster home), under a consent decree under s. 48.32(1)(b), or under a court order under s. 48.355.
- The child was placed under a voluntary agreement between the agency and parents.
- The child is under the guardianship of the agency.

In addition, if the child is living in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, or shelter care facility and one of the following circumstances exists, a permanency plan is required:

- The child's care would be paid for under s. 49.19 [Aid to Families with Dependent Children (AFDC)] but for s. 49.19 (20) [the clause terminating the provision of benefits under AFDC].
- The child's parent is placed in one of the above out-of-home settings and the child is residing with his or her parent.

The permanency plan must be submitted to the court within 60 days after the date the child is first removed from the child's home. However, if the child is held in a secure detention facility, county jail, or shelter care facility for less than 60 days and then returned home within 60 days of removal, no permanency plan is required. While no statutory exception exists for other types of out-of-home care (e.g., foster home), if the child is placed in those other types of out-of-home care and returns home prior to 60 days after the date of removal, a permanency plan need not be submitted to the court.

What a Permanency Plan Must Contain

The permanency plan must include the following information:

- The name, address, and telephone number of the child's parent, guardian, and legal custodian.
- The date on which the child was removed from his or her home and the date on which the child was placed in out-of-home care.
- A description of the services offered and any services provided in an effort to prevent the removal of the child from his or her home, while assuring that the health and safety of the child, and to achieve the goal of the permanency plan,
 - Exception: The permanency plan is not required to include a description of the services offered or provided with respect to a parent of the child to prevent the removal of the child from the home or to achieve the permanency plan goal of returning the child safely to his or her home if any of the circumstances specified in s. 48.355(2d)(b)1. to 5. or 938.355(2d)(b)1. to 4., Stats., (reasonable efforts are not required) applies to that parent.
- The basis for the decision to hold the child in custody or to place the child outside of his or her home.

Placement

- A statement as to the availability of a safe and appropriate placement with a fit and willing relative of the child and, if a decision is made not to place the child with an available relative, a statement as to why placement with the relative is not safe or appropriate.
- The location and type of facility in which the child is currently held or placed, and the location and type of facility in which the child will be placed.
- If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate or documentation that placement more than 60 miles from the child's home is in the child's best interests. The placement of a child in a licensed foster home or a licensed treatment foster home more than 60 miles from the child's home is presumed to be in the best interests of the child if documentation is provided which shows all of the following:
 - That the placement is made pursuant to a voluntary agreement under s. 48.63(1).
 - That the voluntary agreement provides that the child may be placed more than 60 miles from the child's home.
 - That the placement is made to facilitate the anticipated adoptive placement of the child

Education

- Information about the child's education, including all of the following:
 - The name and address of the school in which the child is or was most recently enrolled.
 - Any special education programs in which the child is or was previously enrolled.
 - The grade level in which the child is or was most recently enrolled and all information that is available concerning the child's grade level performance.
 - A summary of all available education records relating to the child that are relevant to any education goals included in the education services plan prepared under s. 48.33(1)(e).
- If as a result of the placement the child has been or will be transferred from the school in which the child is or most recently was enrolled, documentation that a placement that would maintain the child in that school is either unavailable or inappropriate or that a placement that would result in the child's transfer to another school would be in the child's best interests.

Medical

- Medical information relating to the child, including all of the following:
 - The names and addresses of the child's physician, dentist, and any other health care provider that is or was previously providing health care services to the child.
 - The child's immunization record, including the name and date of each immunization administered to the child.
 - Any known medical condition for which the child is receiving medical care or treatment and any known serious medical condition for which the child has previously received medical care or treatment.
 - The name, purpose, and dosage of any medication that is being administered to the child and the name of any medication that causes the child to suffer an allergic or other negative reaction.

Services

- A plan for ensuring the safety and appropriateness of the placement and a description of the services provided to meet the needs of the child and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child or, if available, why such services are not safe or appropriate.
- A description of the services that will be provided to the child, the child's family, and the child's foster parent, the child's treatment foster parent, the operator of the facility where the child is living, or the relative with whom the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

- Ensure proper care and treatment of the child and promote safety and stability in the placement.
- Meet the child's physical, emotional, social, educational, and vocational needs.
- Improve the conditions of the parents' home to facilitate the safe return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

Plan Goals

- The plan must also identify the goal of the permanency plan or, if the agency is making concurrent reasonable efforts, the goals of the permanency plan.
- The agency shall determine one or more of the following goals to be the goal or goals of a child's permanency plan:
 - Return of the child to the child's home.
 - Placement of the child for adoption.
 - Placement of the child with a guardian.
 - Permanent placement of the child with a fit and willing relative.
 - Some other alternative permanent placement, including sustaining care, independent living, or long-term foster care
- If a goal of the permanency plan is any goal other than return of the child to his or her home, the permanency plan shall include the rationale for deciding on that goal.
 - If a goal of the permanency plan is an alternative permanent placement, the permanency plan shall document a compelling reason why it would not be in the best interest of the child to pursue one of the first four goals listed above. .
- If the goal of the permanency plan is to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, the permanency plan must include the efforts made to achieve that goal.
- Finally, the conditions, if any, upon which the child will be returned safely to his or her home, including any changes required in the parents' conduct, the child's conduct, or the nature of the home must be documented in the plan.

Independent Living Transition Plans

- If the child is 15 years of age or over, a description of the programs and services that are or will be provided to assist the child in preparing for the transition from out-of-home care to independent living. The description shall include all of the following:
 - The anticipated age at which the child will be discharged from out-of-home care.
 - The anticipated amount of time available in which to prepare the child for the transition from out-of-home care to independent living.
 - The anticipated location and living situation of the child on discharge from out-of-home care.
 - A description of the assessment processes, tools, and methods that have been or will be used to determine the programs and services that are or will be provided to assist the child in preparing for the transition from out-of-home care to independent living.
 - The rationale for each program or service that is or will be provided to assist the child in preparing for the transition from out-of-home care to independent living, the time frames for delivering those programs or services, and the intended outcome of those programs or services.

[Ref. s. 48.38(4) Stats.]

How Frequently the Permanency Plan Must Be Evaluated

The permanency plan must be reviewed within six months after the child is first removed from his or her home, and every six months thereafter. However, the court must conduct a hearing to review the plan no later than 12 months after the child was first removed from his or her home, and every 12 months thereafter. The interim six month review may be conducted by a review panel or by the court. A court hearing at the six month mark may be held instead of or in addition to a non-judicial permanency plan review.

Permanency Plan Review Panel

If the court decides not to review the permanency plan at the six month interval, it may appoint a panel to review the plan and report to the court on the panel's determinations. The panel will have three people appointed by either the agency that created the permanency plan or by an independent agency approved by the court. A majority of the panel members cannot be employees of the agency that created the permanency plan, or that is providing services to the child or parents. Counties and BMCW may enter into contracts with independent agencies to organize the review panels.

When a permanency plan is reviewed the following people must receive notice from the agency at least 30 days before the review of the date, time and place of the review and the issues to be determined and the fact that they may participate in the review by either attending or submitting written comments ten days before the review panel meets: parents, the child if 12 or older, the foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living. The following people must receive notice at least 30 days before the review of the date, time and place of the review and the issues to be determined and the fact that they may submit written comment ten days before the review panel meets: the District Attorney or Corporation Counsel, the child's attorney, Guardian Ad Litem (GAL), and court appointed special advocate (CASA).

Determinations

The review panel must determine the following items:

- The continuing necessity for and the safety and appropriateness of the placement.
- The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents, the child, and the child's guardian, if any.
- The extent of any efforts to involve appropriate service providers in addition to the agency's staff in planning to meet the special needs of the child and the child's parents.
- The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child.
- The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian, or in some other alternative permanent placement.
- If the child has been placed outside of his or her home, which is defined as the date on which the child was first removed from his or her home, for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan and the circumstances which prevent the child from any of the following:
 - Being returned safely to his or her home.
 - Having a petition for the involuntary termination of parental rights filed on behalf of the child.
 - Being placed for adoption.
 - Being placed with a guardian.
 - Being placed in the home of a fit and willing relative of the child.
 - Being placed in some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.
- Whether reasonable efforts were made by the agency to make it possible for the child to return safely to his or her home, except that the court or review panel need not determine whether those reasonable efforts were made with respect to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5., which include aggravated circumstances, sexual abuse, other assaultive conduct, relinquishment of the child under the safe haven law, or prior termination of parental rights, apply to that parent as determined by the court.

Notice Requirements

Five days before the review panel is to meet, the agency must provide the panel, the District Attorney or corporation counsel, the child's counsel, GAL, and CASA with a copy of the plan and any written comments that have been received. Those receiving the plan and comments may also view other records if they request to do so, but must keep the records and information confidential.

Within 30 days after the review panel meets, the agency must prepare a summary of the determinations made by the panel on the Permanency Plan Review Report and provide a copy to the court, the child or the child's counsel or GAL, the district attorney or corporation counsel, the child's parent or guardian, the child's CASA, and the foster parent, treatment foster parent, or operator of the facility where the child is living. If the review panel recommended changes that conflict with the court order or that provide for additional services not specified in the court order, the agency must request a revision of the court order.

Permanency Plan Hearing

Determinations

At the permanency plan hearing before the court at either the twelve month or six month review, the court must make the same determinations outlined above for the review panel.

Notice Requirements

Notice requirements are slightly different. At least 30 days before the hearing, the following persons must receive notice of the date, time, and location of the hearing: the child; the child's parent, guardian, and legal custodian; the child's foster parent, treatment foster parent, the operator of the facility in which the child is living, or the relative whom the child is living; the child's counsel, GAL, and CASA; the agency that prepared the permanency plan, and the district attorney or corporation counsel. Any of the persons who receive notice may submit written comments relevant to the determinations the court must make, at least 10 days before the hearing. The following persons are not parties to the proceedings despite notice and an opportunity to be heard: a foster parent, treatment foster parent, the operator of a facility in which a child is living, and the relative with whom a child is living. A party is the person or entity who either brings a legal action or against whom a legal action is brought. A party has the right to participate in all aspects of the legal action. A non-party may have specified rights to participate in the action, such as in a permanency plan review the right to submit written comments to the court or review panel, or to offer testimony to the court or panel in person during the review. But a non-party does not have the right to participate in all aspects of a legal action. For example they do not have the right to be present for the entire review hearing, examine witnesses, or obtain a copy of the permanency plan.

At least five (5) days before the hearing, the agency shall provide a copy of the permanency plan and any comments that have been submitted to the court; the child's parent, guardian, and legal custodian; the district attorney or corporation counsel; the child's counsel or GAL; and CASA. The district attorney or corporation counsel, the child's counsel or GAL, and the child's CASA may view other records to prepare for the hearing, but must keep the information confidential.

After the hearing, the court will issue an order making written findings of fact and conclusions of law pertaining to the required determinations and will serve a copy on the following persons: the child; the child's parent, guardian, and legal custodian; the child's foster parent, treatment foster parent, the operator of the facility in which the child is living, or the relative whom the child is living; the child's CASA; the agency that prepared the permanency plan; and the district attorney or corporation counsel. The court's findings on the reasonable efforts determination must be specific to the child and circumstances of the case and cannot simply reference statutory standards.

If the order entered by the court conflicts with the child's dispositional order or orders additional services not included in the dispositional order, the court must revise the dispositional order or placement order.

Permanency Plan Revisions

If a permanency plan has not been prepared at the time the dispositional order is entered or if the court orders a disposition that is not consistent with the child's permanency plan, then the agency must create or revise a permanency plan that is consistent with the disposition order. The plan must be filed with the court within sixty days after the child is first removed from his or her home. The filed permanency plan is part of the dispositional order. Each time the child's placement changes or a dispositional order is revised; the agency must revise the permanency plan and file it with the court. The agency must provide a copy of the original plan and each revised plan to the child's parent or guardian, to the child or the child's counsel, GAL or CASA, and to the district attorney or corporation counsel.

AUTHORITY TO TERMINATE PARENTAL RIGHTS ABSENT A PROPOSED ADOPTIVE RESOURCE

The Division would like to clarify how the issue of the availability of a proposed adoptive resource must be considered in the context of a termination of parental rights proceeding. In deciding whether to terminate parental rights, the court must consider whether termination is in the child's best interest. State law specifies six factors that the court must consider in making a determination regarding the best interests of the child.

- The likelihood of the child's adoption after termination.
- The age and health of the child, both at the time of disposition and, if applicable, at the time the child was removed from the home.
- Whether the child has a substantial relationship with the parent or other family members and whether it would be harmful to the child to sever these relationships.
- The wishes of the child.
- The duration of the separation of the parent from the child.
- Whether the child will be able to enter into a more stable and permanent family relationship as a result of termination.

[Ref. s. 48.426(3)(a), Stats.]

In addition, the petitioning agency must file a report with the court that covers the child's social and medical history, the facts supporting the TPR, previous contact with the child welfare system, what services may help the child return to the home, the factors used to determine the best interests of the child, and, if the court is terminating the rights of both parents or the only remaining known parent, a statement about the likelihood of the child being adopted and, if the agency believes it is unlikely that the child will be adopted, a plan for placing the child in a permanent family setting. [Ref. s. 48.425, Stats.]

The statutes provide for sustaining care to support and provide for those children who will not be adopted immediately after termination of parental rights. [Ref. s. 48.428, Stats.] In addition, if the child is placed in the custody or guardianship of an agency, the agency must file an annual report with the court that, among other items, discusses what progress has been made in finding a permanent placement for the child. [Ref. s. 48.43(5)(a), Stats.]

It is not correct that a petition for termination of parental rights should be denied solely because of the unavailability of an adoptive resource. A review of the statutory structure created by the Wisconsin legislature, as outlined above, makes it clear that the Legislature anticipated that in some cases parental rights would be terminated and the child would not have an adoptive home identified or immediately available. The statute simply requires that the court must, in all cases, consider the likelihood that the child will be adopted in making its determination whether termination meets the best interests of the child standard. This is only one of six enumerated factors and the statute specifies that the court is not limited to those factors in making a best interest of the child determination.

EXCEPTIONS TO THE REASONABLE EFFORTS REQUIREMENTS

As part of the dispositional order, the court or review panel must make findings that the agency primarily

responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from his or her home [s. 48.355(2c)(a) and 938.355(2c)(a), Stats.], or has made reasonable efforts to achieve the goal of the permanency plan. [Ref. s. 48.355(2c)(b) and 938.355(2c)(b), Stats.]

However, under s. 48.355(2d)(b) and 938.355(2d)(b), Stats., the court may choose not to include a finding that reasonable efforts to prevent removal finding and the reasonable efforts to achieve the goal of the permanency plan finding (if that goal is reunification) have been made, if the court finds any of the following circumstances:

- That the parent has subjected the child to aggravated circumstances, based on a final judgment of conviction. "Aggravated circumstances" include:
 - a. Abandonment in violation of s. 948.20
 - b. Torture
 - c. Chronic abuse
 - d. Sexual abuse

(Note: "Torture" and "chronic abuse" are not defined in Wisconsin statutes, so the court has some flexibility in determining when those particular thresholds are met. Please refer to Numbered Memo DCFS-2001-15 for additional discussion of this issue.)

- That the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01 (first degree intentional homicide), 940.02 (first degree reckless homicide), 940.03 (felony murder), or 940.05 (second degree intentional homicide) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, based on a final judgment of conviction, and that the victim of that violation is a child of the parent.
- That the parent has committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), or (5) (battery, substantial battery, aggravated battery), 940.225 (1) or (2) (first degree and second degree sexual assault), 948.02 (1) or (2) (meets the definition of abuse under the Children's Code), 948.025, or 948.03 (2) (a) or (3) (a) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) if committed in this state, based on a final judgment of conviction, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent.
- That the parental rights of the parent to another child have been involuntarily terminated based on a final order of a court of competent jurisdiction terminating those parental rights.
- That the parent has been found under s. 48.13 (2m) to have relinquished custody of the child under s. 48.195 (1) (the safe haven law) when the child was 72 hours old or younger, based on a final order of a court of competent jurisdiction making that finding.

In order to rely on this exception, the court must make a finding based on evidence that is specific to the case and child and must also identify the evidence relied on to make the finding in the disposition order. If the court makes a finding that reasonable efforts are not required, then the court must hold a hearing within 30 days to determine the permanency plan for the child, and the agency must file the plan at least 5 days before the hearing. The court shall notify the following people ten days before the date of the hearing of the date, time, and location of the hearing: the child; any parent, guardian, and legal custodian of the child; and any foster parent, treatment foster parent, or other physical custodian. The hearing provisions outlined above regarding notice, participation, and party status apply to this hearing.

As noted above, this memorandum is an explanation and clarification of existing federal and state law and policy only.